

7512

MR. J.E. GROENLUND

CC : F. DULLES - VISITING COWARD CHANCE LONDON
H. GAISCH - FTR NEUCHATEL
WT, JOG, ~~FHD~~, TLW - PM EEMA

U R G E N T *****

RE : BARCLAY NORWAY
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1. I REFER TO YOUR PHONE CALL OF LAST NIGHT. YOU EXPECT AN ARTICLE ON BARCLAY TO APPEAR IN A NORWEGIAN DAILY BUSINESS PUBLICATION VERY SHORTLY, PERHAPS OVER THE NEXT FEW DAYS. YOU EXPECT THAT IF THE ARTICLE COMES OUT, JOURNALISTS WILL BE CALLING STEIN HAUGEN AND YOU HAVE ASKED ME TO LET YOU HAVE A BASIC STATEMENT THAT STEIN CAN USE.
2. AS YOU KNOW, THE POLICY LAID DOWN BY HAMISH MAXWELL RECENTLY WAS THAT PM WERE TO BE VERY CAREFUL NOT TO BE IDENTIFIED AS THE SOURCE OF STATEMENTS ON BARCLAY. HOWEVER, THIS IS DIFFICULT WHEN JOURNALISTS ASK DIRECT QUESTIONS. THE EEC REGION ADOPT A COMPROMISE OF STICKING VERY MUCH TO THE PUBLIC RECORD IN SUCH A SITUATION.
3. AS BRIEFLY MENTIONED THIS MORNING, I AM SENDING EXPRESS TO STEIN, COPY TO YOU, A COPY OF THE ARTICLE IN ADVERTISING AGE OF NOVEMBER 21 HEADLINE "NEW BARCLAY ADS TAKE LOW ROAD", TEXT OF WHICH I TELEXED TO YOU NOVEMBER 24. THIS COULD BE USEFUL TO PASS TO AN ENQUIRER.
4. AS REGARDS A STATEMENT FOR STEIN, HERE IS THE TEXT OF A BRIEF STATEMENT SENT TO US BY THE PM INC. LEGAL DEPARTMENT WHICH SUMMARIZES THE OUTCOME OF THE CONTROVERSY IN THE U.S.
5. AS DISCUSSED JUST NOW, AS I AM LEAVING FOR LAGOS, PLEASE LIAISE DIRECTLY WITH FREDERICK DULLES ON WHAT USE CAN BE MADE OF THIS, BEARING IN MIND THE CONSTRAINTS. I AM COPYING THIS TELEX TO HIM AT COWARD CHANCE IN LONDON.
6. AS REGARDS THE FINLAND SITUATION, I SUGGEST THE COMMENT SHOULD ONLY BE "THE INDUSTRY UNDERSTANDS THAT THE MATTER IS CURRENTLY UNDER REVIEW BY THE AUTHORITIES".
7. AS REGARDS NORWAY : "WE ARE MONITORING THE SITUATION".
8. HERE IS THE NEW YORK TEXT.

QUOTE

PHILIP MORRIS EUROPE SA
8 DEC. 1983
EEMA LEGAL DEPARTMENT
File :

2501048467

THE BARCLAY DECISION

ON OCTOBER 14, 1983, JUDGE GERHARD A. GESELL OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA, FOLLOWING A FIVE-DAY TRIAL, RULED THAT BROWN + WILLIAMSON'S ADVERTISING OF BARCLAY AS A 1 MG. "TAR" CIGARETTE IS FALSE AND DECEPTIVE. THIS CONCLUSION WAS BASED ON EXTENSIVE SCIENTIFIC EVIDENCE THAT "BARCLAY DELIVERS TO THE SMOKER'S MOUTH SIGNIFICANTLY MORE TAR THAN OTHER CIGARETTES WITH A 1 MG. FTC RATING.". JUDGE GESELL CONCLUDED THAT BARCLAY FILTER'S VENTILATION SYSTEM IS COMPROMISED UNDER ACTUAL SMOKING CONDITIONS, WHICH IS NOT TRUE FOR ANY OTHER CIGARETTE. BASED UPON EXTENSIVE FINDINGS, JUDGE GESELL ENTERED AN INJUNCTION ORDERING BROWN + WILLIAMSON TO DELETE ALL REFERENCES TO BARCLAY AS A 1 MG. "TAR" CIGARETTE FROM BOTH ADVERTISING AND PACKAGING.

BROWN + WILLIAMSON ASKED THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT TO STAY THE EFFECTIVENESS OF JUDGE GESELL'S ORDER. ON NOVEMBER 7, 1983, THE COURT OF APPEALS SUMMARILY REJECTED BROWN + WILLIAMSON'S STAY APPLICATION. THE COURT SAID THAT BROWN + WILLIAMSON "HAS UTTERLY FAILED TO DEMONSTRATE ANY LIKELIHOOD OF ULTIMATELY SUCCEEDING ON THE MERITS OF ITS APPEAL."

EARLIER THIS YEAR, THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT CONCLUDED THAT THERE WAS "OVERWHELMING EVIDENCE" THAT BARCLAY WAS NOT A 1 MG. "TAR" CIGARETTE. BROWN + WILLIAMSON'S CLAIMS WITH RESPECT TO BARCLAY HAVE THUS BEEN REJECTED BY THREE OF THE MOST DISTINGUISHED COURTS IN THE UNITED STATES, AND BY THE FEDERAL ADMINISTRATIVE AGENCY RESPONSIBLE FOR MONITORING THE TRUTH OF ADVERTISING CLAIMS. INJUNCTIONS AGAINST DECEPTIVE ADVERTISING ARE RARELY SOUGHT BY THE FEDERAL TRADE COMMISSION AND ARE RARELY GRANTED AND ACCORDINGLY IT IS APPARENT THAT THE BARCLAY DECEPTION WAS VIEWED AS A MATTER OF UNUSUAL SERIOUSNESS, AND THAT THE EVIDENCE OF DECEPTION WAS STRONG AND PERSUASIVE.

UNQUOTE

BEST REGARDS,

R.M. CORNER
+++ TC

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